

TANK NOTES

STATE OF
NEW MEXICO
ENVIRONMENT
DEPARTMENT



... A Newsletter from
the Underground
Storage Tank Bureau

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SUMMER 1995

Department sees changes, improvements, and hopes for CAF future

by Peter Maggiore, Environmental Protection Division Director, and Anna Richards, UST Bureau Chief

Effective immediately, the interim reimbursement policy has been rescinded. Retroactively, the Environment Department is encumbering one hundred percent of the costs of workplans for second and third-priority sites — sites which had been slated for a timely reimbursement of only 80 or 60 percent. Project managers will be contacting each of the tank owners affected by this change.

This change is the latest in an ongoing effort to prudently manage the Corrective Action Fund. Here's the latest on the status of the Fund, and the implications it has for the tank owner, operator, consultant, and the Environment Department.

History

During the 1995 legislative session, our knowledge of the Fund balance was based on the previous administration's estimate of a cash balance of approximately \$15 million by June 30, 1995. In an effort to provide an "early warning" of the zero cash balance point, this administration has taken the accounting beyond cash balance to include obligations. We use the word "obligations" to describe preapproved workplan costs on which claims have not yet been filed. By taking obligations into account, the resulting unobligated, unencumbered balance more accurately reflects the Fund status.

To make a long story short, when June 30, 1995 rolled around, the Fund had an unencumbered, unobligated balance of less than \$4 million. In addition, beginning July 1, 1995, income to the Fund was reduced

by half. These observations have caused the Department to reevaluate processes in both the Reimbursement and Remedial Action programs. Deficit spending from the Fund is not allowable under state law.

What we are doing

The Department basically had two choices. On one hand, we could decertify the Fund as a financial responsibility (FR) mechanism. This would have the effect of requiring every tank owner to obtain private insurance within 60 days of the date of fund decertification.

Alternatively, we could try to slow expenditures from the Fund and maintain the Fund as an FR mechanism, at least until the 1996 legislative session, where we hope to find a solution. It is this latter option that the Department has elected to pursue.

Where we are heading

To try to reduce or slow expenditures from the Fund, the Department has (1) held vacancies in the UST Bureau staff, (2) submitted a "bare bones" budget request for the next fiscal year (beginning July 1, 1996), (3) attempted to reduce expenditures to extend the Fund as a financial responsibility mechanism, and (4) implemented additional fiscal controls. Also, Remedial Action staff are considering alternate remediation strategies, such as intrinsic bioremediation, in an attempt to assist tank owners with finding lower-cost solutions to remediation within the limits set by the Underground Storage Tank regulations. Adoption of the Water Quality

Continued on page 5



*A Quarterly Newsletter of the Underground
Storage Tank Bureau, New Mexico
Environment Department*

TANK NOTES

Mark E. Weidler,
NMED Secretary
Edgar T. Thornton,
NMED Deputy Secretary

PUBLISHERS
Underground Storage Tank Bureau,
New Mexico Environment Department and
the Institute of Public Law,
University of New Mexico

USTB EDITOR
John French
IPL EDITORS
Kathy Grassel, Judy Flynn-O'Brien

EDITORIAL BOARD
Anna Richards,
UST Bureau Chief
Shelda Sutton-Mendoza,
Prevention/Inspection Manager
Gregg Crandall,
District I Program Manager

CONTRIBUTING WRITERS
Judy Flynn-O'Brien
John French
Kathy Grassel
Betsy Hovda
Peter Maggiore
Ray Montes
Anna Richards
Shelda Sutton-Mendoza

UST COMMITTEE
Edgar T. Thornton, Chairman
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Bruce Thomson
Paul Valencia

CIRCULATION
Nancy Gutierrez

LAYOUT AND DESIGN
Kathy Grassel

The information in this newsletter is directed at the UST owner/operator population and is provided as a general information guide. It is not intended to replace, interpret or modify manufacturers' protocols, or the rules, regulations or requirements of local, state or federal government, nor is it intended as legal advice.

Thank you for your interest in *Tank Notes*. We welcome your comments and suggestions. Send address changes and correspondence to: New Mexico Environment Department, Underground Storage Tank Bureau, Harold Runnels Building, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502

UST Bureau Field Inspectors for Tank Installations, Closures and Major Modifications, and Compliance

Albuquerque NMED District Office
(Albuquerque, Belen, Bernalillo,
Los Lunas, Santa Rosa, Socorro)
Robert Miller, Dan Lopez, John French,
John Cochran
4131 Montgomery NE
Albuquerque, NM 87109
505/841-9459

Clovis NMED Field Office
(Clovis, Tucumcari)
Harry Gunn
212 E. Grand
Clovis, NM 88101
505/762-0173

Farmington NMED Field Office
(Aztec, Bloomfield,
Farmington, Cuba)
Dan Claypool
724 W. Animas
Farmington, NM 87401
505/325-2458

Grants NMED Field Office
(Gallup, Grants)
Norman Pricer
1212½ Lobo Canyon Road
Grants, NM 87020
505/287-8845

Hobbs NMED Field Office
(Hobbs, Carlsbad)
Gary Blocker
726 E. Michigan, Ste. 165
Hobbs, NM 88240
505/393-4302

Las Cruces NMED District Office
(Alamogordo, Las Cruces, Deming,
Silver City, T or C)
Len Murray
Abel Ramirez
1001 N. Solano Drive
P.O. Box 965
Las Cruces, NM 88004
505/524-6300

Las Vegas NMED Field Office
(Clayton, Las Vegas, Springer, Raton)
Adrian Jaramillo
1800 New Mexico Avenue
Las Vegas, NM 87701
505/425-6764

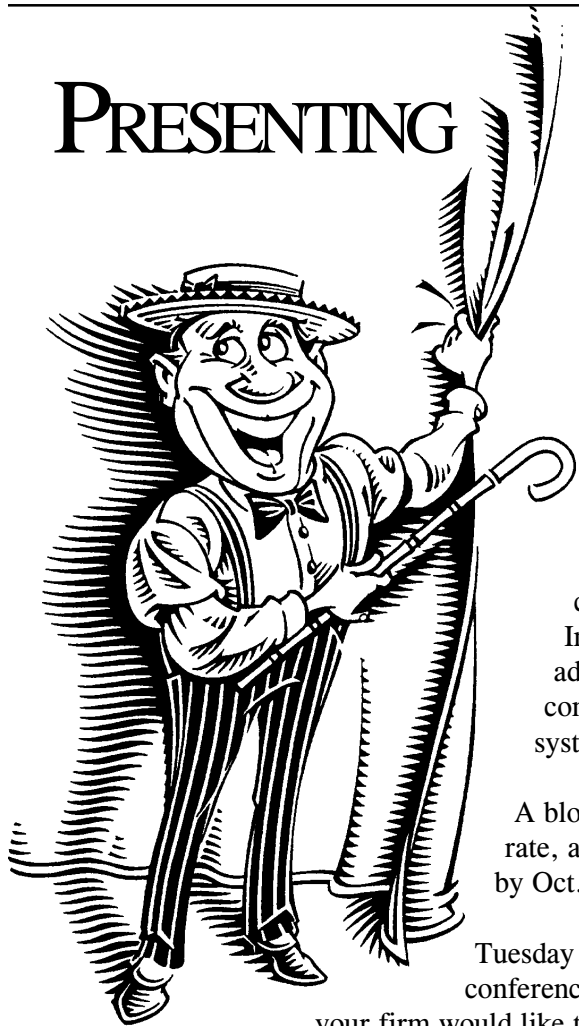
Roswell NMED District Office
(Artesia, Roswell, Ruidoso)
Teresa McMillan
1914 West 2nd St.
Roswell, NM 88201
505/624-6123

UST Bureau in Santa Fe
(Northern NM, other areas
not covered)
Shelda Sutton-Mendoza,
Program Manager 505/827/2910
Ruben Baca 505/827-2914
Melanie Deason 505/827-0079
1190 St. Francis Drive - N2150
P.O. Box 26110
Santa Fe, NM 87502

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PRESENTING



UST Conference and Trade Show in November

The Underground Storage Tank Bureau will hold its 1995 conference on November 7 and 8 at the Albuquerque Convention Center. About 600 are expected to attend the conference for the topics, workshops, and panel presentations. As many as 150 exhibitors are expected to operate booths in the Southwest Exhibit Hall.

Parallel sessions will be held on remediation topics and facility operations/management topics. Bureau staff, owners and operators, and recognized experts will participate in presentations on: the Corrective Action Fund, handling leaking USTs, the new contractor certification program, the new competitive bidding process, payment prioritization, USTs on Indian land, 1998 upgrade requirements, financial responsibility, advances in release detection, cleanup levels and action levels of contamination, the latest in remediation from EPA, advances in system management, and much more.

The conference hotel is the Doubletree Hotel in Albuquerque. A block of rooms has been set aside. To get the conference room rate, and to guarantee a reservation, call the hotel at (505) 247-3344 by Oct. 16, 1995.

The registration fee is \$50 and includes the luncheons on Tuesday and Wednesday. To obtain a brochure and registration for this conference, contact the conference coordinator at the address below. If

your firm would like to sponsor a break or the social hour, contact John French at 505/841-9459. If you'd like to be an exhibitor, contact the conference coordinator. Call, fax or write your requests to:

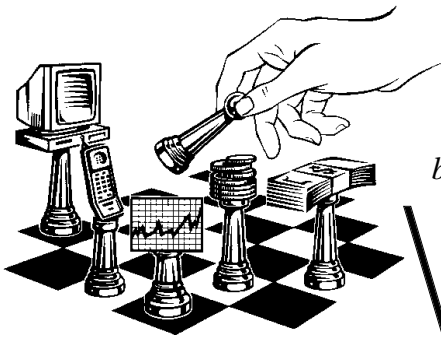
R.T. Nielson Company
1995 UST Conference & Trade Show
P.O. Box 1902
Albuquerque, NM 87103-1902
Tel: 1-800-613-9484 — Fax: 1-800-780-1946

REGISTRATION FORM

YES, REGISTER ME FOR THE 1995 UST CONFERENCE & TRADE SHOW TO BE HELD AT THE ALBUQUERQUE CONVENTION CENTER IN ALBUQUERQUE, NEW MEXICO, ON NOV. 7 AND 8. MY REGISTRATION FEE OF \$50 IS ENCLOSED WHICH INCLUDES BOTH TUESDAY AND WEDNESDAY LUNCHEONS.

NAME _____
 ORGANIZATION _____
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MAKE CHECK PAYABLE AND MAIL TO:
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Obtaining Cleanup Coverage in the Private Insurance Market

by Judy Flynn-O'Brien, attorney, Institute of Public Law

While the Environment Department is not

requiring tank owners to obtain private insurance for corrective action costs right now, you may be getting nervous about the viability of the state Corrective Action Fund. And, as we've said before in *Tank Notes*, the Fund is not an insurance company and it cannot guarantee that fund monies will be available for future cleanups. Since you are buying third-party insurance on the private market anyway (unless you have other means of meeting financial responsibility requirements), you might be wondering about getting cleanup coverage, too.

We last provided our readers a list of UST insurers in the summer 1995 issue of *Tank Notes*. We've dusted the cobwebs off the list and done some updating.

Keep in mind that there are limitations to the list! It won't help you clean up existing contamination. And even with clean sites, if you haven't upgraded your tank systems yet, you'll probably pay a lot for your insurance. We can't tell you how much. Insurance underwriters look at each account and consider the number of sites and tanks, the age and construction of the tank systems, the leak detection system being used, and other factors. You will need to get quotes from insurers based on your own situation.

Agricultural Excess & Surplus Insurance Co. (AESIC), a surplus lines carrier within the **Great American** group, offers either full coverage (corrective action and third party coverage) or just third party coverage. The minimum premium for full coverage is \$2,500. Contact Crump Insurance Services at 800/888-7126.

The **American International Group (AIG)** has a program called EnviroGuard through member company **Commerce and Industry**. (C&I has taken over the program from fellow AIG member National Union

Fire.) C&I is an "admitted" company whose policy forms and rates are approved by the state Insurance Superintendent and which participates in the state insurance guaranty fund. Policies are available for third-party or full coverage. The program no longer has a set minimum premium; its minimum deductible is \$5,000. Contact the Sedgwick James Co. in Pennsylvania at 800-255-7112.

The Garage Services and Equipment Dealers Liability Association of America is a purchasing group with a UST program underwritten by **Homestead** and other insurance companies. Policies are available for full or just third-party coverage. The minimum premium for a full coverage policy is \$1,000 and the minimum deductible, or self-insured retention, is \$2,500. (Homestead used to sell UST insurance directly

but is now working just with the purchasing group, open to all UST owners/operators. Existing policies with Homestead can be renewed through the group, with the first year's \$75 membership fee waived.) Contact GSEDLAA at 800/845-3225.

Lloyd's of London underwriters continue to offer a UST pollution program, with either full or third-party coverage available. The minimum deductible is generally \$25,000. Contact The Planning Corp. at 703/481-0200.

United Coastal Insurance Co. offers UST coverage geared toward the larger accounts, with minimum premiums of \$30,000 per account. Contact the company at 203/223-5000.

Zurich American Insurance Group offers full coverage through a program handled by Pollution Liability United States (PLUS). Like the AIG program, Zurich policies are written on an admitted basis in New Mexico. The standard deductible is \$5,000 and there are no set minimum premiums. The program normally provides quotations within 24 hours of receipt of the application. Contact PLUS at 800/866-4758.

Tank Owners Insurance Co. of Texas, a risk retention group, continues to offer third party coverage for tanks in New Mexico to complement the state corrective action fund. The company intends to enter

Think your commercial general liability policy covers USTs? Think again! Insurance companies usually exclude pollution incidents from their general liability policies, so don't assume you have the coverage. The UST Regulations provide an easy way for you to check: Ask your insurance company for the "certificate of insurance" or "endorsement" described in Section 907(b); you need it anyway to comply with the regulations. Be sure to keep a copy of the document handy so that you can make it available to the UST Bureau and its inspectors upon request.

the cleanup market but is proceeding cautiously. Contact **TOIC** at 800/336-1338.

CHUBB Group of Insurance Cos. targets non-marketers with its UST coverage, available through licensed CHUBB agents. Contact Mike Camfield at 908/903-2168. At least two other insurance companies offer UST pollution insurance to customers buying other insurance from the company. The Oilmen's Insurance Plan offers coverage through

through **Fireman's Fund** when other Fireman's Fund insurance is purchased. Contact Oilmen's representative in Albuquerque, David Bloom, at 821-5650.

Universal Underwriters makes UST pollution coverage available as part of its insurance package for franchised auto, motorcycle and truck dealers, parts dealers and independent garages. Contact the company at 800/262-3122. ●

Gov. and Lt. Gov. express support for CAF at Ruidoso meeting

RUIDOSO—The New Mexico Petroleum Marketers Association met in Ruidoso Sept. 11-12 for their annual meeting and trade show. Gov. Johnson, Lt. Gov. Bradley, Sec. Weidler and numerous Department staff attended the meeting. One of the issues most discussed was the future of the Corrective Action Fund or an alternate plan to assist tank owners in meeting the costs of corrective action. Both of New Mexico's top elected officials spoke directly to this issue.

During his lunchtime presentation, Lt. Gov. Bradley identified four different approaches to solving the CAF program funding shortfall. These potential solutions include: (1) a straight allocation from the General Fund, (2) a loading fee per truckload, (3) a private insurance solution addressing all facilities, and (4) a corrective action fund for old releases with a transition to private insurance.

In an evening presentation, Gov. Johnson committed his support to finding a solution to the Corrective Action Fund shortfall during the next legislative session. The Department looks forward to working with the Governor, Lieutenant Governor, the legislature, industry and other interested parties in identifying and implementing a solution.

Corrective Action Fund update....continued from page 1



Control Commission abatement regulations should create a pathway for alternate cleanup standards. Staff will encourage tank owners to use such standards at certain low-risk sites.

New fiscal controls

The key new fiscal control measure being taken is to aggressively track workplans as they are approved, with a goal of reporting realistic and current Fund balances so tank owners can make sound business decisions. The Department is upgrading its workplan tracking database to do this. A second improvement is encumbering workplans as early in the claim application process as possible. For most workplans this is as soon as the claim comes into the Bureau and the tank owner is declared eligible for reimbursement. An encumbered workplan can be thought of as a check written out but not signed. A significant limitation of this step lies in the fact that a separate encumbrance must be done for each year during which work is expected to be done. Fixed price, pay-for-performance workplans, which are favored for their simplicity of invoicing and for their performance-triggered payments and guarantees, present a challenge to the Reimburse-

ment Program. Manager Gale Hill is working with the problem to find a solution that will still encourage this approach. A Fund with several years of healthy income is a necessity for this type of workplan to work for the consultant and tank owner. In the meantime, staff are working with consultants and tank owners to break down the expected work and costs by fiscal year for encumbering purposes.

The Department does not mean to downplay the financial problems faced by the Fund. However, it is our hope that these measures will raise the comfort level of tank owners such that they continue to take prompt corrective action, file claims and receive the financial assistance the Fund was created to provide.

Finally, the Department's leadership provided testimony to the Legislative Finance Committee and the Revenue Stabilization and Taxation Committee. More presentations are planned with the goal of identifying a legislative solution to this funding problem during the 1996 session of the legislature. See the Ruidoso meeting story above for more on possible legislative remedies to inadequate funding of cleanups. ●

State Conference Boosts Bioremediation

by Hunter McCleary, editor

Reprinted with permission from The Bioremediation Report, Washington, D.C.

The U.S. EPA's success in educating regulators about bioremediation has prompted one state agency to borrow the STEW recipe and run their own program. In June, New Mexico's Underground Storage Tank Bureau conducted a two-day conference that attracted 175 participants from throughout the Southwest.

The conference, held June 22-23 in Santa Fe, was conceived by Bureau Chief Anna Richards in what she believes was the first state-run educational conference on bioremediation.

Their handful of UST bioremediation sites would not place them among the bioremediation state elite. New Mexico has identified about 900 UST sites that require attention, but bioremediation is being used at fewer than a dozen.

Richards expects that as a result of this conference, her department will see more workplans proposing bioremediation. "The fact that we sponsored this event has been interpreted by the practitioners that we are open to seriously considering bioremediation as an approach," she said.

The Santa Fe program included representatives of the bioaugmentation community and, according to Richards, those sessions generated some of the most heated discussions. The bioaugmentation camp said results matter most, not how one gets there.

Richards said her department has been reluctant to approve bioaugmentation projects. She said they had requested peer review articles, quantitative data and case histories but that adequate support material

has not been forthcoming from bioaugmentation companies.

Nevertheless, the leadership of the New Mexico Environment Department is very enthusiastic about the promise bioremediation holds for petroleum as well as chlorinated sites. To that end, New Mexico has funded some pilot trials and is interested in sharing the risk of untried technologies with the practitioner through performance-based payments so that if they meet certain criteria they will receive payment.

"We support innovation," she said, "and the fact that we have (Regenesis Bioremediation Product's) oxygen release compound being tested at a site supports this. They came in with peer reviewed articles, trials, and lots of data which built a good quantitative credibility record. That's what makes us comfortable and these will be the projects that get approved."

In offering insights for other states considering a conference, Richards said that it was important to keep costs down for state workers. The conference, which incurred only \$3,000 in direct expenses, was offered free of charge and required no pre-registration. The only notice of the conference appeared in *Tank Notes*.

No meals were provided, but consultants attending the meeting got together to contribute donuts and coffee. Also keeping costs down was the willingness of speakers to cover their expenses and foot their own bill to gain an audience.

Richards said her department is considering having one conference per year and a likely topic for next year would be risk-based corrective action. (For more information, Anna Richards may be contacted at 505/827-0173.)

Ex-Situ Sparging and Bioenhanced Remediation of Gasoline-Contaminated Ground Water

A case study in New Mexico demonstrates the efficacy of bioremediation

by Betsy Hovda, formerly District I Geologist

William Mansker with Innovative Exploration spoke at the UST Bureau's Bioremediation Conference on the use of an ex-situ air sparging and bioenhanced remediation of gasoline-contaminated groundwater at a site in Belen. Gasoline-contaminated soils and groundwater at the site resulted from long-term, low-volume gasoline releases from leaking suction product line connections. The on-site investigation identified a subsurface soil contamination area of approximately 100 ft x 140 ft extending to ground water at 3.8 ft below the surface. The hydrogeologic investigation determined that shallow groundwater was contaminated in a plume that roughly

subsumed the zone of soil contamination with minor down-gradient excursion of the contaminated groundwater.

Site soil remediation included removal of contaminated overburden to below groundwater level and on-site landfarming of approximately 1,600 yards of highly and moderately contaminated soils. A groundwater system was designed that incorporated a reverse drain field and centralized sump to collect contaminated ground water, two 7,500-gallon above-ground open horizontal holding tanks, and a horizontal continuous air sparge stripping system.

A typical influent water sample, taken at the initiation of system turn-on, reported the following analysis in parts per billion.

<u>MTBE</u>	<u>BENZENE</u>	<u>TOLUENE</u>	<u>ETHYL-BENZENE</u>	<u>XYLENES</u>
890	1800	5700	71	5400

Successive batch testing (15,000 gallons/batch) demonstrated that the system was capable of cleaning the contaminated ground water to below NMWQCC discharge standards and NMED-USTB action levels in 20 hours (equivalent to 12.5 gallons per minute); and to below analytical detection limits (BDL) in approximately 30 hours.

Groundwater production from the collection system (drains and sump), from the relatively low permeability aquifer, was limited to approximately 4-5 gpm. After one week of batch pilot testing, the groundwater remediation system was converted to a continuous influent mode of operation. Pilot testing of the continuous mode determined a "water residence" time of approximately 45 hours in the air sparge holding tanks.

The groundwater remediation system operated from April 28, 1994 through March 28, 1995. In October 1994, after approximately 180 days of operation, influent target analytes (includes BTEX and MTBE), except for benzene and MTBE, were below NMWQCC discharge standards and NMED-USTB action levels. Elevated levels of benzene (150-300

ppb) and MTBE (100-140 ppb) in influent water were reported erratically above action levels in monthly sampling events. System effluent was continuously BDL for all target analytes except spurious MTBE (2-6 ppb).

In October 1994 the remediation work plan was amended to incorporate in-situ bioenhancement as a means of augmenting indigenous biodegradation of nagging benzene and MTBE. The biotreatment was implemented on March 28, 1995 and involved introduction of a nutrient augmented, oxygenate, liquid humate base. Operation of the groundwater remediation system was suspended during the biotreatment and for a brief equilibration period. The mixture was introduced under pressure to contaminated ground water via existing 2-inch PVC groundwater monitoring wells, dedicated small diameter injection wells, and deep subsurface injection probes.

After a ground water equilibration period of 45 days, 15,000 gallons of groundwater were pumped from the sump to the holding tanks and the influent and effluent waters were sampled. The influent sample reported as follows in ppb.

<u>MTBE</u>	<u>BENZENE</u>	<u>TOLUENE</u>	<u>ETHYL-BENZENE</u>	<u>XYLENES</u>
37	30	12	5.8	43

Preliminary data show a marked decrease in target analyte levels after a groundwater equilibration period of 45 days and indicate that bioaugmentation of indigenous heterotrophic organisms is a viable alternative for groundwater remediation. •

State of the State Funds

Colorado Springs conference reveals determination to deal with insolvency problems

by Anna Richards, UST Bureau Chief

Underground storage tank state fund administrators gathered at their fourth annual conference in Colorado Springs this June to grapple with the challenges facing state funds during these uncertain times. While most funds are plagued by solvency issues, fund administrators came with a can-do attitude that it's not too late to fix things.

Lisa Lund, Assistant Director of EPA's Office of Underground Storage Tanks, elaborated on four steps to revitalize an ailing corrective action fund:

1. Establish the purpose of the fund. This may seem obvious, but many states have not clearly articulated their fund's ultimate purpose. Then set the goal of the fund and develop a plan to achieve that goal.
2. Clearly articulate the fund's future role and function. Is it financial relief for tank owners, restoration of groundwater, or both?
3. Keep those who have a vested interest in the fund involved in decision-making and planning.
4. Funds must **further** regulatory goals, not **impede** them. Funds exist because of the regulations. Furthermore, funds and regulations must work together. Funds cannot stall corrective action.

Lund said it is critical that fund administrators be flexible, be able to manage change and to take advantage of available tools to ensure good financial management. They have to be ready to handle problems and changing conditions that come their way.

According to Lund, here's how to make some basic home improvements to your Fund: First, constantly rethink and revise processes and controls. Communicate with other states to share ideas and experiences. Keep interested parties involved. Finally, keep the big picture, have a plan, be pro-active and use political savvy.

Participants added some ideas of their own. Some expressed a wish to reduce the role of government by including the private sector. The equation could include state funds, insurance, the banking industry and the real estate industry. Everyone agreed on how important it is to communicate to state legislators what for, how much and for how long state funds need income.

And just when you thought New Mexico's fund was, well, going down the drain, here's what going on across the country...

- Outstanding claims are greater than the fund balance in 11 states.
- Outstanding claims are greater than the balance plus one year's revenue in four states.
- Dollar amount of claims continue to increase.
- \$2.5 billion in claims have been paid nationwide.
- 19 states prioritize payment of claims.
- 37 states have pre-approval requirements.
- Competitive bidding is required in 26 states.
- Contractor certification is required in 20 states.
- 36 states oversee cleanups.
- 11 states have fund administrators.
- 16 states have had legislative changes in the last year.
- 46 states have funds.

Three solvent funds reported on their approaches (which may or may not meet New Mexico's needs):

- No coverage for old releases
- Regulatory compliance required - leak detection required, tank fees paid up
- No abandoned tanks covered
- Contaminant must be the same as the product stored
- Pay for results - pre-approval, oversight, auditing
- Keep deductible greater than \$5000
- Fee schedule/cost controls
- No coverage for non-operating owners

As the threat looms of decertification of funds as a financial responsibility mechanism, owners and operators may soon be searching out private coverage. Conference participants discussed alternatives which could include state funds teaming up with insurance companies. Some examples for a state fund/insurance partnership might work like this:

Tank owner pays a deductible. After that, there's a cap on what the state fund pays and private insurance picks up the balance. The reverse, where the insur-

ance company has a cap and the state fund picks up the difference, would be another option. Finally, insurance companies would pay for new releases and cleanup funds would take care of old releases.

The American Petroleum Institute has been following the course of state funds since their inception. It's representatives at the conference had some added perspectives.

- Keep pre-approval and unit cost pricing.
- Resolve problems by focussing the purpose of the fund, and by funds and regulations working together.
- Address long-term stability.
- Do not use "disincentives."

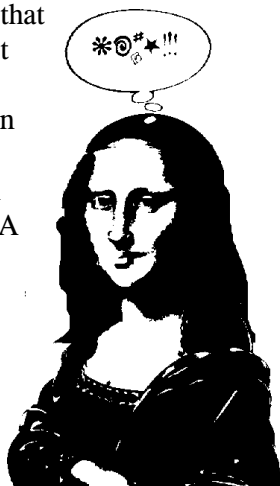
- Use risk-based decision-making to eliminate unnecessary cleanups.
- Increase the involvement of interested parties. Exactly who are the interested parties? The obvious ones are tank owners and operators, including convenience stores, mom-and-pops, major oil companies, and petroleum marketers. Legislators, who create the funds, are very interested parties. Less obvious interested parties might include geotechnical consultants, car rental companies, trucking companies, insurance companies, bankers, real estate industry, citizens groups. These are the groups that often get left out of public/private policy and decision-making. •

Extra! Extra! Get your workplan pre-approvals here!

by Ray Montes, Project Manager in Santa Fe

Ever have that feeling that everything is going just fine with your case?

Contamination has been found at your site; you've hired a consultant, turned in the 72-hour, 7-day, and MSA reports to the UST Bureau, and then KABLUHEY! The Reimbursement Program at the UST Bureau sends you this measly little reimbursement check that's not as much as you thought it would be. It's time for a reality check as well.



What happened? Let's ask some questions:

1. Did you have a MSA workplan sent to the UST Bureau? Was it pre-approved before commencing work? Was a budget approved?
2. If unforeseen field conditions were encountered at the site during the MSA and the budget was exceeded, was a budget increase requested from the UST Bureau? Was the increase approved before the work was done?

Many RPs discover that this is the reason why reimbursement checks are sometimes pathetic. Remember - ALL costs have to be pre-approved before they are incurred! This should be done by first submitting workplans for EACH phase of work to the appropriate project manager at the UST Bureau. The project manager will issue a letter stating that the workplan has been approved and a budget will be granted. If an increase in the budget is needed later (e.g. if bedrock is encountered at the site during drilling and a different type of rig is needed), then a phone call should be made from the site to the appropriate project manager BEFORE incurring any additional cost. The caller should explain the situation and request a budget increase. If the increase is reasonable, the project manager will send a written letter to the RP which will note the increase. If the project manager assigned to the case is not available at the time of the phone call, then ANY project manager will be pleased to help out. That's all it takes ... and project managers don't bite.

It's always better to call the Bureau and ask if you're not sure what to do. That way you won't have to take a reality check instead of a reimbursement check.

INSIDE THE UST COMMITTEE

Money woes discussed at UST committee meetings

by Kathy Grassel, editor, Institute of Public Law

Leading up to the Bureau's decision to rescind the interim reimbursement policy were some lively discussions among Bureau staff and affected tanks owners, operators and consultants during the UST committee meetings. That the Bureau listened to the audience's concerns and reconsidered its policy is a reminder to the regulated community to come to the meetings and let its voice be heard. It is one of the only public forums where the Bureau and the community can meet to talk about mutual problems. Meetings are usually the last Wednesday of the month in Santa Fe or Albuquerque. Call Carmen at the Bureau at 827-0397 for details of time and location.

The coming airplane crash: Can the landing be a soft one?

Trying to put the State of the Fund in the best possible light proved difficult at the July UST committee meeting as one audience member likened the impending disaster to an airplane crash. While Deputy Secretary and UST Committee Chair Edgar Thornton reassured the audience that the UST program is moving forward, committee member Paul Valencia disagreed. "The program is in trouble because of a 50 percent cut in the Fund, a likely increase in tank fees, and possible privatization of financial assurance," Valencia said. Committee member and Albuquerque city councilor Vince Griego also expressed concern that the program was in jeopardy. "People need to talk to their legislators to increase the loading fee," he said.

Anna Richards said the Bureau had to consider a ground-up reevaluation of the program which could include providing fewer services. She added that a business approach from the public standpoint had to be balanced with a business approach from a pollution prevention standpoint. She reported that regulations have been approved by the Water Quality Control Commission to allow cleanup standards using a site-by-site approach, where a site "can get NFA [No Further Action] status before action levels are reached. Until now, we were mandated to reach standards even if the risk was small."

Richards opened a discussion about an interim reimbursement policy designed to keep the fund solvent and to extend the ability of the Fund to serve as a financial responsibility mechanism as long as possible. The Bureau would reimburse all approved costs for the Minimum Site Assessment and the first

two phases of cleanup but, after that, just a certain percentage of the costs for further phases will be reimbursed, with the balance paid only when funds become available.

Brad Billings of Billings & Associates asked if the balance of an approved workplan would definitely be paid when the Fund had the money. Division Director Pete Maggiore said the Bureau could not spend money it didn't have, but already-approved workplans should be secure.

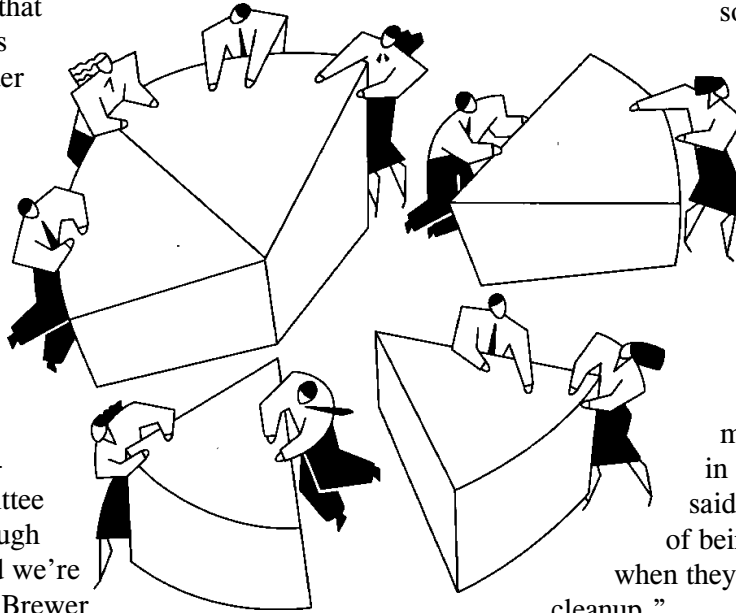
He cautioned owners that future approval of workplans came with the caveat that the Bureau could not guarantee reimbursement in full, but that the Bureau's interim policy should make for a softer landing. Billings said that as a consultant he was in a bind because he couldn't front the money and would have to ask for up-front money from RPs.

Stuart Faith of Faith Engineering said that consultants couldn't afford to bankroll the cleanups. If a third-priority site is reimbursed at 60 percent, who's going to pay the 40 percent? Charlie Hooker said banks wouldn't fund it, owners couldn't front it, consultants couldn't afford it, and the state couldn't reimburse until money became available and even then could provide no guarantees. Hooker speculated that maybe despite the Bureau's attempt to make the crash landing a soft one, they could nevertheless start picking up the bodies now. Ted Berridge, including himself in the body count, was concerned that the partial reimbursement policy would make legislators think the Bureau's budget was balanced while the Bureau was actually practicing deficit spending at the expense of owner/operators. Maggiore said that the other option would be to decertify the fund as a financial responsibility mechanism which would require owner/operators to get private insurance in 60 days. The Bureau had designed the interim policy to

buy time, "to get to the next session with proposed revisions so we won't have to decertify."

Anna Richards commented that the Department has the option to take over first-priority sites as state-lead, but it's the Bureau's assessment that conditions at second- and third-priority sites aren't going to change that much if cleanup has to slow down or shut down, and, as she says, "we have the ability to sample for monitoring purposes." Richards said sites would be evaluated for the possibility of less aggressive cleanup based on the potential for natural attenuation, adding that Section XII of the UST regs allows the Bureau to consider lower risk.

Hooker observed that the Bureau was in the unfortunate position of "having to drag it out to avoid running it out." He complimented Anna Richards and her team for doing a good job and emphasized the importance of the participation of interested parties at UST committee meetings. "You've got a tough job," he said to Anna, "and we're here to help you." Charley Brewer moved to establish an independent task force to propose legislation and develop a long term plan to provide for solutions to the Corrective Action Fund problem. Brad Billings said he'd serve. "I'm looking for a landing I can walk away from."



P/I Manager Shelda Sutton-Mendoza said an unfortunate byproduct of the uncertainty was that some operators had canceled upgrade plans because they were using that money to pay for cleanups instead. "There are other impacts besides whether sites get cleaned up or not," she said. Consultant Tom Lewis added that he knows of upgrades grinding to a halt because pulling tanks can result in finding contamination and that the owner can't afford to clean up without reimbursement from the state.

Consultant Brad Billings said some of his clients had instructed him to stop work. Another consultant, Dan Kelly, said some of his company's clients had decided not even to proceed with a minimum site assessment. "They say that in five months, there's nothing in the Fund anyway," he said, "and they're afraid of being out of compliance when they can't afford to start cleanup."

Charlie Hooker expressed concern that the accounting system gave a false impression of soundness of the fund, whereas in actuality, if the Department paid out claims as in the past, the fund would be broke in a very short time. With the legislative session looming, maybe it would be worth considering, according to Hooker, to continue reimbursement full steam ahead, so that the legislators would be cognizant of the looming crisis of bankruptcy of the fund.

Committee member Bruce Thomson summed things up when he pointed out the two prevailing, contradictory issues: 1) The Department needed to develop a strategy to keep money in the fund to prolong its life and, at the same time, 2) develop a strategy that would instill the legislature with the urgency to restore the troubled Fund to its former solvency. According to consultant Bill Turner, "the legislature has to know that push has come to shove." ●

Snack or famine: Controversy swirls over reimbursement policy at August meeting

The August meeting picked up where July left off with owners, operators, and consultants worried about where they stood vis-a-vis reimbursement of cleanups. The committee heard that many owners have stopped, slowed down, or not started work based on the feeble health of the Fund and rumors of bankruptcy. Anna Richards, responding to a question posed by committee member Charlie Hooker, said a number of small operators have had to stop work because of inability to pay the 40 percent of the cleanup pricetag that the UST Bureau had deferred paying under the partial-payment interim policy. [The interim policy has since been rescinded; see front page.]

Getting to Know UST

It's a Team Come True

by Kathy Grassel, editor, Institute of Public Law

Department's Deputy Secretary and Chairman of the UST Committee has credentials to burn but says he's "just a regular Joe"

Edgar Thornton comes to the Environment Department with a briefcase stuffed with credentials, from national politics to high levels of government to the national labs. The Johnson administration recruited Edgar from Los Alamos National Laboratory where he was a senior staffer in the Lab's environment, safety and health organization. Before that, he was at EPA as a presidential appointee for three years during the Bush administration serving as a NAFTA negotiator. He also worked on congressional legislation concerning a wide range of environmental, trade, and regulatory policy-related issues. Because of his expertise in the relationship of environmental concerns to trade and economic development, Edgar says he's interested in promoting New Mexico environmental technologies, consultants, and producers of environmental products to Mexico, Central America, and Asia. "I've met with the state economic development people on a number of occasions and we're applying for grants," he says. "We really see a number of opportunities for New Mexico's environmental business sector. It's going to be fun to apply many of the ideas I learned in Washington on the state level."

Along these lines, Edgar wants to export New Mexico's UST knowledge south of the border. "Our expertise within the Bureau and the strong capabilities of our state's UST business community could make us an invaluable resource to our neighboring Mexican states to help them develop or improve their UST regulations," Edgar says the Bush administration was very trade-oriented and the Clinton administration has maintained "a lot of what we got started there."

Prior to EPA, Edgar was at the Bureau of Land Management in the Interior Department where he worked with

the oil & gas and coal industries. Another of Edgar's specialties is election strategy -- how to get people elected to office. He recruited candidates for the Republican party throughout the country and distributed money to their campaigns. "As an example, in 1988, I gave out \$6 million to various U.S. Senate candidates from California to Mississippi for commercials, direct mail, advertising, and political surveys."

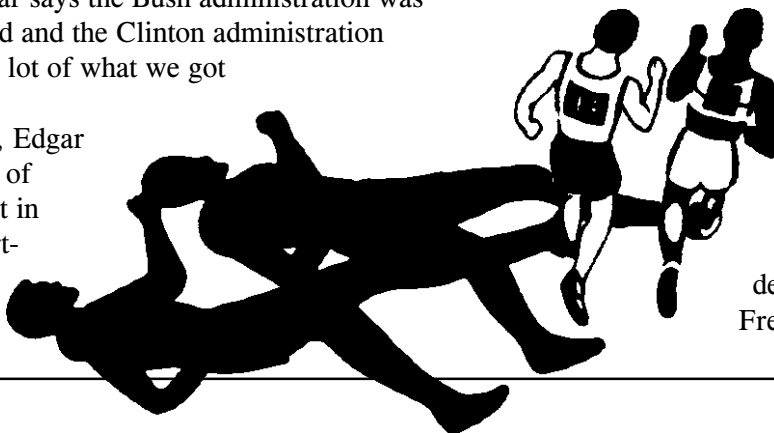
Edgar sees the Environment Department team as one of the best he's ever worked with and Secretary Weidler as one of the best bosses. "We are an excellent team because he's got an incredible technical background and private sector knowhow, while I have government experience and have worked in large organizations." Edgar's other team is his wife and three-year-old. They've lived in Santa Fe for four years now. His word for it: Paradise.

Thornton's got government, Weidler's got industry, Maggiore's got both. Rounding out the team is Pete Maggiore, back with the Department after a six-year stint in the private sector.

Pete looks wistfully at his running shoes which he used to pull on every lunch hour and go for a quick run. These days he's too busy. With great enthusiasm, Pete Maggiore accepted Secretary Mark Weidler's offer to serve as the Director of the Environmental Protection Division, which includes the UST Bureau. "But I said to Mark, 'You didn't tell me we were going to have half the money when you hired me.'"

For Bureau oldtimers, Pete is a familiar face. He remembers how it was in the early days of underground storage tank regulation. He was the third person hired when the Bureau was a new section within the Hazardous Waste Bureau back in 1986.

Pete got a master's degree in geology from UNM. Fresh out of school, he went to



work for Shell Oil company in Houston as an exploration geologist. He stayed with Shell for three years before becoming a graduate faculty member at the University of Maine where he also ran a geochemistry laboratory. "I decided it was too cold and the winters too long, so I came back to New Mexico," Pete says. "That's when I started with the UST program." Leaving the department in 1989, he spent six years in the engineering and environmental consulting fields. Now he's back as Director of the Environmental Protection Division.

He met Mark Weidler in January. "We hit it off great. We had a lot of similar experiences, philosophies and goals in terms of where we would like to see the department go, and so it was a good fit." What caught Weidler's eye was Pete's diverse background. He'd worked in the mining industry, in the oil industry, in academia, in state government, and as a consultant to industries and municipalities. Pete thinks he'll need to draw on this broad experience to run the division.

According to Pete, the direction the UST Bureau is going to head is toward customer service. "This administration views everyone that we touch as a customer -- members of the public who call in with concerns, tank owners, contractors -- the whole universe of people that we work with on a daily basis." Pete wants the programs and their customers to help identify ways to improve services. "We can do more with less. I hope the people who read *Tank*

Notes will take us up on that offer, because they're the people who know how to do more with less." Doing more with less will require flexibility and, along with that, revisions to the regs, according to Pete. "I was around when those regs were written, and they're still an excellent set of regulations," he says, "but coming back now and revisiting them, I see portions which appear dated." Pete, too, is looking toward risk-based corrective action as a way to keep costs down while cleaning up the environment, all the while keeping an eye on mandates such as the Hazardous Waste Act, the Water Quality Act, and the New Mexico Water Quality Control regs to make sure the UST regs are compatible.

Pete's idea of fun is mountain running. He lives in Placitas where he has his pick of trails from his backyard. "It's just awesome." Then there's his old softball team that he playing with again, and with his wife there's backpacking, camping and traveling. He says he decided to become a geologist because he loved the outdoors.

Meanwhile, Pete wants people to take advantage of his open door policy. "If they've got any comments or issues they'd like to discuss -- what they think is good about the program, what they think can be improved, directions that should be taken, I've always got an open door." Pete says he's trying to be a good listener and use his experience in the public and private sector to try to guide the program, build on what's been done, and to move it into a new era.



Anna Richards named Bureau Chief

The Environment Department and the UST committee enthusiastically welcome the appointment of Anna Richards as UST Bureau Chief. Veteran Bureau staffer, Anna started with the Department in 1986 in the state's Ground Water Bureau. At the UST Bureau since 1990, Anna came up through the ranks from Water Resource Specialist to Program Manager for the Remedial Action Section and now to Bureau Chief. These are tough times for the UST program and the corrective action fund, so it's good to have Anna's experience and expertise guiding the program. Welcome, Anna!

Installer certification amendments slated for hearings

On Oct. 20, the Environmental Improvement Board will hold a hearing on amendments to Part 14 of the UST regs. These amendments will add an additional level of installer certification for those who intend only to install or repair overspill, overflow, and leak detection devices. This new certification will be Level B tank installer certification. Level A tank installers will be certified to perform complete installation and repair of UST systems. The new two-tiered system replaces the current installer certification. The hearings will be held at 9:30 a.m. in Room 317 of the State Capitol Building, located at the corner of Old Santa Fe Trail and Paseo de Peralta in Santa Fe.

If you wish copies of any of the proposed regulations, please call Teresa Griego at the UST Bureau at 827-0188. •

Leak o' the Week

Date	Report Person	Phone #
Sep 18-22	Dana Bahar	827-2926
Sep 25-29	Jack Ford	827-2566
Oct 2-6	Steve Jetter	841-9461
Oct 9-13	David Nye	841-9478
Oct 16-20	Tony Moreland	827-0158
Oct 23-27	Jane Cramer	841-9477
Oct 30-Nov 3	chris holmes	827-2916
Nov 6-10	Dana Bahar	827-2926
Nov 13-17	Jack Ford	827-2566
Nov 20-24	Steve Jetter	841-9461
Nov 27-Dec 1	David Nye	841-9478



How is installer certification related to child support? Read on!

The 1995 legislature passed a law called the Parental Responsibility Act which requires parents to eliminate their child support arrearages in order to maintain their professional and occupational licenses. Installer certificates count as licenses and can be suspended or revoked under this law for failure to pay child support.

Here's how the law works: For years, the state Human Services Department has enforced child support orders on behalf of parents requesting help with collections. The new law requires that HSD maintain a list of parents from whom it is trying to collect and who are behind in their payments by at

least 30 days. At last report, there were 16,000 people on the list, which is distributed monthly to other state agencies. If an agency has issued a license to someone on the list, agency staff will send an informal notice to the person giving him or her 30 days to make past-due payments and to return a form to the agency verifying payment. Failure to pay subjects the person to suspension or revocation of their license. So tank installers owing child support, don't be surprised if you get a letter from the Environment Department!

Feel free to call Shelda Sutton-Mendoza at the UST Bureau in Santa Fe (827-2910) if you have any questions. •

Hearings held on reg changes

by Shelda Sutton-Mendoza, Prevention/Inspection Program Manager

Hearings were held on August 14 and 15 on proposed changes to the UST Regulations and the Corrective Action Fund Regulations. The procedures began with a hearing by the Environmental Improvement Board on the changes to the UST Regulations which provide for consultant certification. A law passed during the 1995 legislative session states that reimbursement for corrective action may only be made for work performed by qualified firms.

Further hearings held by the Secretary of the Environment Department on proposed amendments to the Corrective Action Fund and Payment Regulations were also based on laws passed during the 1995 session. These amendments have provisions to prioritize reimbursements and payments when funds are limited and the Corrective Action Fund is no longer an approved financial responsibility mechanism. There is also a requirement to amend the regs to provide that payments will be based on a competitive bid process. Final decisions to adopt regulations are being made as this issue goes to press. We'll report more in the next issue.

UST regulators get field training

Marcel Moreau back in New Mexico to show his stuff

by John French, Environmental Supervisor, District I

Inspectors with the Underground Storage Tank Bureau spent four days in training in June. Conducted in the Albuquerque area, this special training was attended by 14 inspection and compliance officers from around the state. UST expert and consultant Marcel Moreau traveled from his homebase in Maine to conduct compliance training in release detection, system upgrades, statistical inventory reconciliation (SIR) methods, new installations, record-keeping, and new products for fueling facilities.

There was no air-conditioned classroom for this training. Participants went to 13 sites with unusual, high-tech, or difficult release detection situations. The facility owners/operators were contacted in advance about hosting a visit and review of their UST system. The owner/operator received a free consultation from Marcel and the UST staff. The site review covered equipment, release detection, operation, reports, tank monitoring, corrosion protection, and upgrades.

Recommendations were made for any problems found at participating facilities. The following is a brief list of subjects and situations encountered:

1. Several fuel leaks and drips were observed around pumps and line leak detectors.

2. One impressed current system was tested and measured and found not to be working at the tank. The power-control box inside the shop had no meter but showed a green light. The operator agreed to call his corrosion system installer.

3. Some facilities have small tanks that would require shut-down for manual tank gauging once a week. However, they need to operate seven days a week. Alternatives were discussed on how to meet release detection requirements.

4. At facilities using some types of SIR (Statistical Inventory Reconciliation), records showed that tank and line tightness testing is being done, but line leak detectors were not being tested annually. Discussion included how to test line leak detectors and who can do it.

5. At some large fueling operations, there are satellite dispensers to fuel saddle tanks on trucks. At some sites, the line to the second (satellite) dispenser does not have a leak detector for that line. Consultation was provided how to install a Y-connector and a solenoid valve so the satellite line can be monitored with the existing line leak detector.

The training was very useful for inspectors. The UST Bureau extends thanks to all facility owners and operators who hosted this activity at their sites.



*I can't believe
I forgot to
upgrade*

1998 may seem like a long way away, especially these days, but it's sooner than you think. The Bureau urges you to get started before the last minute.

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Underground Storage Tank Bureau
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Santa Fe, NM 87502

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